

## 235.017-1

Federally Funded Research and Development Center (FFRDC) if a member of its board of directors or trustees simultaneously serves on the board of directors or trustees of a profit-making company under contract to DoD, unless the FFRDC has a DoD-approved conflict of interest policy for its members (section 8107 of Pub. L. 102-172 and similar sections in subsequent Defense appropriations acts).

[58 FR 28471, May 13, 1993]

### 235.017-1 Sponsoring agreements.

(c)(4) DoD-sponsoring FFRDCs that function primarily as research laboratories (C3I Laboratory operated by the Institute for Defense Analysis, Lincoln Laboratory operated by Massachusetts Institute of Technology, and Software Engineering Institute operated by Carnegie Mellon) may respond to solicitations and announcements for programs which promote research, development, demonstration, or transfer of technology (Section 217, Public Law 103-337).

[60 FR 61598, Nov. 30, 1995, as amended at 69 FR 65092, Nov. 10, 2004]

### 235.070 Indemnification against unusually hazardous risks.

#### 235.070-1 Indemnification under research and development contracts.

(a) Under 10 U.S.C. 2354, and if authorized by the Secretary concerned, contracts for research and/or development may provide for indemnification of the contractor or subcontractors for—

(1) Claims by third persons (including employees) for death, bodily injury, or loss of or damage to property; and

(2) Loss of or damage to the contractor's property to the extent that the liability, loss, or damage—

(i) Results from a risk that the contract defines as “unusually hazardous;”

(ii) Arises from the direct performance of the contract; and

(iii) Is not compensated by insurance or other means.

(b) Clearly define the specific unusually hazardous risks to be indemnified. Submit this definition for approval with the request for authorization to

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grant indemnification. Include the approved definition in the contract.

[56 FR 36416, July 31, 1991, as amended at 64 FR 51076, Sept. 21, 1999]

#### 235.070-2 Indemnification under contracts involving both research and development and other work.

These contracts may provide for indemnification under the authority of both 10 U.S.C. 2354 and Public Law 85-804. Public Law 85-804 will apply only to work to which 10 U.S.C. 2354 does not apply. Actions under Public Law 85-804 must also comply with FAR 50.104-3.

[56 FR 36416, July 31, 1991, as amended at 78 FR 21850, Apr. 12, 2013]

#### 235.070-3 Contract clauses.

When the contractor is to be indemnified in accordance with 235.070-1, use either—

(a) The clause at 252.235-7000, Indemnification Under 10 U.S.C. 2354—Fixed Price; or

(b) The clause at 252.235-7001, Indemnification Under 10 U.S.C. 2354—Cost-Reimbursement, as appropriate.

#### 235.071 Export-controlled items.

For requirements regarding access to export-controlled items, see 225.7901.

[73 FR 42278, July 21, 2008, as amended at 78 FR 36111, June 17, 2013]

#### 235.072 Additional contract clauses.

(a) Use the clause at 252.235-7002, Animal Welfare, or one substantially the same, in solicitations and contracts awarded in the United States or its outlying areas involving research on live vertebrate animals.

(b) Use the basic or the alternate of the clause at 252.235-7003, Frequency Authorization, in solicitations and contracts for developing, producing, constructing, testing, or operating a device requiring a frequency authorization.

(1) Use the basic clause if agency procedures do not authorize the use of DD Form 1494, Application for Equipment Frequency Allocation, to obtain radio frequency authorization.

(2) Use the alternate I clause if agency procedures authorize the use of DD Form 1494, Application for Equipment

Frequency Allocation, to obtain frequency authorization.

(c) Use the clause at 252.235-7010, Acknowledgement of Support and Disclaimer, in solicitations and contracts for research and development.

(d) Use the clause at 252.235-7011, Final Scientific or Technical Report, in solicitations and contracts for research and development.

(e) Use the clause at 252.235-7004, Protection of Human Subjects, in solicitations and contracts that include or may include research involving human subjects in accordance with 32 CFR Part 219, DoD Directive 3216.02, and 10 U.S.C. 980, including research that meets exemption criteria under 32 CFR 219.101(b). The clause—

(1) Applies to solicitations and contracts awarded by any DoD component, regardless of mission or funding Program Element Code; and

(2) Does not apply to use of cadaver materials alone, which are not directly regulated by 32 CFR Part 219 or DoD Directive 3216.02, and which are governed by other DoD policies and applicable State and local laws.

[56 FR 36416, July 31, 1991, as amended at 60 FR 29500, June 5, 1995; 70 FR 35545, June 21, 2005. Redesignated at 73 FR 42278, July 21, 2008; 74 FR 37645, 37648, July 29, 2009; 79 FR 17447, Mar. 28, 2014]

## PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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236.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36421, July 31, 1991, unless otherwise noted.

### Subpart 236.1—General

#### 236.102 Definitions.

*Construction activity* means an activity at any organizational level of the DoD that—

(1) Is responsible for the architectural, engineering, and other related technical aspects of the planning, design, and construction of facilities; and

(2) Receives its technical guidance from the Army Office of the Chief of Engineers, Naval Facilities Engineering Command, or Air Force Directorate of Civil Engineering.

*Marshallese firm* is defined in the provision at 252.236-7012, Military Construction on Kwajalein Atoll—Evaluation Preference.

*United States firm* is defined in the provisions at 252.236-7010, Overseas Military Construction-Preference for United States Firms, and 252.236-7011,